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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/825,496

04/15/2004

John C. Sullivan

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EXAMINER

NGUYEN, KIEN T

ART UNIT

PAPER NUMBER

3711

MAIL DATE

DELIVERY MODE

10/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/825,496 | Applicant(s) SULLIVAN ET AL. | |
| | Examiner KIEN T. NGUYEN | Art Unit 3711 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 65-117 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 83-92, 107 and 113-117 is/are allowed.
- 6) ☒ Claim(s) 65-82, 93, 97-106, 108 and 110-112 is/are rejected.
- 7) ☒ Claim(s) 94-96, 109 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/16/09</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 65-67, 75, 78-82, 93, 97, 100-103 are rejected under 35 U.S.C. 102(b) as being anticipated by French Patent 1,019,607.

FR ('607) disclosed a flat mounting plate (15); a mounting member (6); a spring (2) secured between the flat mounting plate and the mounting member (Fig. 14); wherein a first end portion of the spring is secured to the flat mounting plate such that the spring is perpendicular with respect to the flat mounting plate, a second end portion of the spring is secured to the mounting member; a flat image (1) secured to the flat mounting plate (15), wherein the spring facilitates a wobble movement of the flat mounting plate and the flat image in a clockwise and counterclockwise manner with respect to the longitudinal axis of the spring as shown in Figs. 18-20. A spring mount as shown in Fig. 4 is employed to secure the spring to the first mounting plate. FR ('607) also a base as shown in Fig. 24 providing a slot (not numbered) provided on a top portion of the base for receiving a bottom portion of the body (24); a turntable portion (bottom wheels) to rotate the wobble image/head in a manually manner. Figs. 24, and 27-29 show at least two images coupled to the body via two springs extending perpendicularly between a vertical plane of the body and a vertical plane of each of the images

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 68, 70-73, 98, 106, 108, 110, 111 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR ('607).

It is noted that FR ('607) failed to specifically teach various types of the spring mount as claimed. However, such differences are considered mechanical expediciencies and it would have been a matter of design choice to substitute the spring mount of FR ('607) with any equivalent mount to perform the same function.

Regarding claims 98, 106, it would have been a matter of design choice to utilize any particular compressed height for the spring to accommodate any particular environment.

Regarding claims 110 and 111, it is noted that FR ('607) failed to specifically disclose the materials as claimed. However, such different materials are common used in signs and or displays. Therefore, it would have been a matter of design choice to utilize any suitable material for the apparatus of FR ('607) to accommodate any particular environment.

Claims 69, 76,74, 77, 99, 105, are rejected under 35 U.S.C. 103(a) as being unpatentable over FR ('607) in view of Micco U.S. Patent 5,280,905.

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It is noted that FR ('607) failed to teach the use of a press board and a microchip to produce sound as claimed. However, Micco disclosed a tacking dummy having a press board with an image in a form of a photograph, and a microchip for producing sound. Therefore, it would have been obvious to one of ordinary skill in the art to modify the figurine of FR ('607) with the sound device as taught by Micco for the purpose of providing an interactive display for the user.

Allowable Subject Matter

Claims 83-92, 107, 113-117 are allowed.

Claims 94-96, 109 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KIEN T. NGUYEN whose telephone number is (571)272-4428. The examiner can normally be reached on 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kien. T. Nguyen/
Primary Examiner
Art Unit 3711

Ktn